

OPEN MEETING ITEM

COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: July 1, 2013

DOCKET NO.: W-02015A-11-0416

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

**ALBERT L. SMITH V. BEAVER VALLEY WATER COMPANY
(COMPLAINT)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 10, 2013

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JULY 17, 2013 AND JULY 18, 2013

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

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JUL - 1 2013

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Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 In the matter of:

9 ALBERT L. SMITH,

10 Complainant,

11 v.

12 BEAVER VALLEY WATER COMPANY,

13 Respondent.

DOCKET NO. W-02015A-11-0416

DECISION NO. _____

OPINION AND ORDER

14 DATES OF HEARING:

May 17 and June 14, 2012

15 PLACE OF HEARING:

Phoenix, Arizona

16 ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

17 APPEARANCES:

Mr. Albert L. Smith, *In Propria Persona*;

Mr. Michael Davoren dba Beaver Valley Water
Company, *In Propria Persona*; and

Mr. Scott Hesla, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

18 **BY THE COMMISSION:**

19 On November 18, 2011, Mr. Albert L. Smith ("Complainant") filed with the Arizona
20 Corporation Commission ("Commission") a Complaint against Beaver Valley Water Company
21 ("BVW" or "Company") with respect to a billing dispute involving Complainant's water bill for his
22 residence in Payson, Arizona.

23 On December 19, 2011, BVW filed an Answer to the Complaint filed by Mr. Smith.

24 On December 22, 2011, by Procedural Order, a pre-hearing conference was scheduled on
25 January 18, 2012.

26 ...

1 On January 18, 2012, at the pre-hearing conference, Complainant appeared on his own behalf.
2 Mr. Michael Davoren appeared on behalf of BVW. Although the parties conducted settlement talks,
3 they were unable to reach a resolution of the Complaint herein. At the conclusion of the pre-hearing
4 conference, the Complainant, Mr. Smith, was directed to file by February 8, 2012, an Amended
5 Complaint to simplify the issues. The Company was directed to file its Answer/Response by
6 February 21, 2012.

7 On January 31, 2012, Mr. Smith filed his Amended Complaint with the Commission, but he
8 failed to serve the Company with a copy so that it could respond.

9 On February 17, 2012, Mr. Davoren filed a letter in the docket and stated that he had not
10 received a copy of the Amended Complaint from Mr. Smith and requested that the proceeding be
11 dismissed.

12 On February 21, 2012, by Procedural Order, Mr. Smith was ordered to mail a copy of the
13 Amended Complaint by February 29, 2012, to Mr. Davoren and file proof of mailing the Amended
14 Complaint by certified U.S. mail return receipt requested in the docket. BVW was ordered to file,
15 within fourteen days of the receipt of the Amended Complaint, BVW's Answer/Response after which
16 a hearing would be scheduled.

17 On February 22, 2012, Mr. Smith filed proof of mailing the Amended Complaint.

18 On March 2, 2012, BVW filed its Answer/Response with the Commission.

19 On March 14, 2012, by Procedural Order, a hearing was scheduled on May 17, 2012.

20 On May 17, 2012, the Complainant appeared at the hearing. Mr. Davoren failed to appear,
21 but earlier that week had contacted an administrative assistant in the Hearing Division to request a
22 continuance because he was out of state. Although he had been directed to file his request in writing
23 by faxing it to the Hearing Division, he did not do so. Despite objections by the Complainant, it was
24 determined that the proceeding should be continued.

25 On May 18, 2012, by Procedural Order, the proceeding was continued to June 14, 2012.

26 On June 14, 2012, a full public hearing was convened before a duly authorized Administrative
27 Law Judge of the Commission at its offices in Phoenix, Arizona. Complainant appeared on his own
28 behalf and Mr. Michael Davoren, who is the owner of BVW, appeared on behalf of the Company. At

1 the conclusion of the proceeding, the matter was taken under advisement pending submission of a
2 Recommended Opinion and Order to the Commission.

3 On July 2, 2012, the Complainant filed a letter and affidavit with the Commission. There was
4 no indication that a copy of this filing was sent to the Company.

5 On July 6, 2012, by Procedural Order, a complete copy of the Complainant's letter and
6 affidavit filed on July 2, 2012, was mailed to BVW which was directed to file a response. It was
7 further ordered that the parties were directed to send copies of any filings made with the Commission
8 to the opposing parties at their respective addresses on the service list. Subsequently, on July 30,
9 2012, Mr. Davoren filed a letter with the Commission which did not indicate whether it had been sent
10 to the Complainant.

11 On August 1, 2012, Mr. Smith filed a letter with the Commission which did not indicate
12 whether it had been sent to BVW.

13 On August 20, 2012, by Procedural Order, a copy of a letter from the Complainant was
14 mailed to BVW since there was no evidence that a copy of this letter was mailed to the Company as
15 previously ordered.

16 On August 29, 2012, another letter was sent to the Commission by BVW which again did not
17 indicate whether it had been sent to the Complainant.

18 On January 14, 2013, a Recommended Opinion and Order ("ROO") was issued.

19 On January 22, 2013, Mr. Smith filed exceptions to the ROO.

20 On January 30, 2013, at the Commission's Open Meeting on this matter, Mr. Smith indicated
21 he had received a credit from the Company and would file a request to withdraw his Complaint.

22 On January 31, 2013, Mr. Smith filed a request to withdraw his Complaint.

23 * * * * *

24 Having considered the entire record herein and being fully advised in the premises, the
25 Commission finds, concludes, and orders that:

26 ...

27 ...

28 ...

FINDINGS OF FACT

1
2 1. On November 18, 2011, the Complainant filed with the Commission a Complaint
3 against BVW alleging that he had a billing dispute for water service at his residence in Payson,
4 Arizona.

5 2. Although the parties appeared at a pre-hearing conference on January 18, 2012, they
6 were unable to reach a resolution of the Complaint filed by Mr. Smith and due to the mixed issues
7 raised therein, Mr. Smith was directed to file an Amended Complaint.

8 3. On January 31, 2012, Mr. Smith filed an Amended Complaint with the Commission.

9 4. On March 2, 2012, BVW filed its Answer/Response to the Complaint herein.

10 5. In his Amended Complaint, Mr. Smith alleges that the BVW failed to take a beginning
11 meter reading when water service was turned on at his residence located at 437 North Sleepy Hollow
12 Drive in Payson, Arizona on May 5, 2011. Mr. Smith further alleged that BVW had used an end
13 reading from a bill which he had received in August 2004 when he last had water service to a trailer
14 located at that location. As a result, Mr. Smith states that he was overcharged on his first month's
15 water bill. Mr. Smith further states in his Complaint that he believes he should only be charged the
16 basic monthly charge plus the \$35 connection fee for the billing cycle of May 5, 2011 to June 7,
17 2011.

18 6. In BVW's Answer, its owner, Michael Davoren, stated that the Complainant was
19 misstating the facts, and that the billing had been correct. According to Mr. Smith's bill for water
20 service with a billing date of June 7, 2011, he was billed for water service from August 2, 2004, to
21 June 7, 2011, with a total consumption of 37,020 gallons for which he was billed \$237.62 for his
22 usage, \$35 for the activation of his service and \$18.21 for taxes, for a total of \$290.83.¹ (Ex. C-4)

23 7. Mr. Smith testified that his residence in the Beaver Valley area outside of Payson,
24 Arizona is a part-time residence that he uses on weekends and sometimes during the week. (Tr. 7: 20-25)

25 8. At the time of the hearing, Mr. Smith testified that his permanent residence is located
26 in Tempe, Arizona. (Tr. 8: 7-9)

27 ...

28 ¹ Written at the bottom of the bill was a note of payment for \$65 and a notation that \$225.83 was in dispute.

1 9. Mr. Smith testified that after receiving the bill in question he sent the water company a
2 check for \$65 because he believed his bill contained an obvious mistake and he was disputing the
3 amount which he had been billed.

4 10. Mr. Smith further testified that he had attached a copy of a letter from a representative
5 of the Commission's Utilities Division ("Staff") dated September 8, 2011, along with his Amended
6 Complaint. (Ex. C-3)

7 11. Mr. Smith stated that the basis of his dispute with the Company is that his bill states
8 that water usage is from August 2, 2004 to June 7, 2011, and that encompasses seven years of water
9 usage. He explained that his water service had been disconnected in August 2004 and that his
10 property had received no water service until he had it reconnected on May 5, 2011, at his lot where
11 his new house was being built. (Tr. 112: 5-18)

12 12. Mr. Smith further testified that between August 2004 and May 2011 he had owned the
13 property on Sleepy Hollow Drive, but it was simply a vacant trailer, a mobile home that was sitting
14 on the lot and that he was not living in it. (Tr. 12: 19-25)

15 13. Mr. Smith stated that he had observed his water connection being turned off and
16 padlocked in 2004. (Tr. 13: 1-7)

17 14. Mr. Smith testified that he had the service restored on May 5, 2011, when he asked
18 Mr. Davoren to turn it on, and that on May 5th he took a reading himself and wrote it on a sheet of
19 note paper from a Marriott Residence Inn notepad. Mr. Smith stated that the reading was 222,330.0
20 and Mr. Smith's sheet of paper was admitted into evidence.² (Tr. 13: 8-22) (Ex. C-1)

21 15. Mr. Smith further testified that on his June 2011 bill he had been charged for 37,020
22 gallons of water, but based on his reading shown on Ex. C-1 of 222,330 with the end reading on June
23 7, 2011, of 222,650, it would have resulted in only 320 gallons of water usage. (Tr. 14: 7-14)

24 ...

25 ...

26 ...

27 _____
28 ² Mr. Smith stated that he saved the note paper from the hotel from when he had been on a mountain lion hunt in
northern Arizona, with what he termed was his beginning water reading. (Tr. 14: 15-25)

1 16. According to Mr. Smith, he went to see Mr. Davoren and complained that he had been
2 overcharged for 37,000 gallons of water for his first month's water usage in 2011 after his water
3 service was turned on when his new home was being built on his lot. At that time Mr. Smith was told
4 that his water would be shut off.

5 17. Mr. Smith testified that he was in the process of having the home built on Sleepy
6 Hollow Drive and in April 2011 started demolition on his old trailer and on April 20, 2011, work was
7 begun to clean the site and then to dig the footings for the new house. (Tr. 15: 13-18)

8 18. Mr. Smith testified that his contractor hauled water in 55 gallon drums to the
9 construction site for use during construction. (Tr. 15: 19-24)

10 19. Mr. Smith further testified that on April 28, 2011, his property was inspected and then
11 Payson Concrete came out to pour the cement used for the footings, but the cement truck did not
12 require water since it hauled its own. (Tr. 16: 12-19)

13 20. Mr. Smith testified that between April 29, 2011, and May 3, 2011, the "stem walls"
14 were constructed and were only two or three blocks high followed by "rough-in" plumbing and
15 electrical. According to Mr. Smith, up until that time, May 4, 2011, there was no water or concrete
16 used. (Tr. 19-20: 21-16)

17 21. Mr. Smith further stated on May 5, 2011, the day that he had his water service from
18 BVW turned on, the cement slab was poured for his house by Payson Concrete using concrete
19 previously mixed and delivered by their trucks. (Tr. 20: 16-25)

20 22. Testifying further, Mr. Smith stated that on May 10, 2011, his contractor began
21 construction of his new home's cinder block walls.

22 23. Mr. Smith maintains that his contractor, Mr. Plues, used only about 200 gallons of
23 water to build the house's cinder block walls. Mr. Plues describes in an unsworn statement that he
24 used forty 60-pound bags of cement to construct the cinder block walls of Mr. Smith's home.
25 According to Mr. Plues' statement, he only used up to five gallons of water per bag to make the
26 cement for the block walls. (Ex. C-5)

27 24. Mr. Smith testified that on about June 16, 2011, Payson Concrete returned with mortar to
28 grout the walls and that the construction crew only used water to clean off their tools. (Tr. 21-22: 21-2)

1 25. Mr. Smith further testified that by the end of May 2011, construction had
2 proceeded on the roof with no block work, and water was only used for washing hands or
3 cleaning tools. (Tr. 22: 13-25)

4 26. According to Mr. Smith, the construction workers never left the water running at the
5 construction site. (Tr. 23: 5-7)

6 27. Mr. Smith testified that when he received his bill in June from BVW, the balance of
7 the work had been for interior construction for the previous eight or nine days, with no cement block
8 work taking place. (Tr. 24: 17-24)

9 28. Mr. Smith maintained that when his meter was read on June 7, 2011, and had a
10 reading of 222,650 gallons, this compared favorably to what Mr. Smith stated was the reading on
11 May 5, 2011, of 222,330 gallons. (Tr. 25: 20-25)

12 29. Mr. Smith maintains that the amount of water the company claims was used, was not
13 used, based on his earlier reading of the meter and because it did not take into account the fact that
14 the contractor hauled water to the job. (Tr. 26: 1-7)

15 30. Based on the evidence, Mr. Smith's water service had been turned off for seven years
16 when service was turned back on at the beginning of May 2011.

17 31. According to Mr. Smith, although a new meter reading is supposed to be taken
18 whenever service is established, both he and Staff "were advised that a previous meter reading from
19 the company archives was used as a beginning reading."³(Tr. 31: 21-25)

20 32. Mr. Smith testified that he is disputing approximately \$225.83 of his first month's
21 bill for water usage from May 5 until June 7, 2011, since he has already paid \$65 of the bill
22 representing the activation charge, plus the company's base rate, and any amount due for
23 additional usage. (Tr. 34-35: 21-11)

24 33. Mr. Smith stated that, based on his readings, his correct usage for the period in
25 question was only 320 gallons. (Tr.35: 15-22)

26 ...

27

28 ³ Mr. Smith's June 2011 bill reads as follows: "from Aug. 2, 2004 to June 7, 2011." (Ex. C-4)

1 34. According to Mr. Smith, Mr. Davoren used his end reading in 2004 for the initial
2 reading in 2011 and that Mr. Davoren himself had told him he didn't take an initial reading.
3 (Tr. 36: 1-15)

4 35. According to Mr. Smith, from 2004 until 2011 the meter was closed and locked on the
5 company's side of the water line, but during that same time frame, the valve to Mr. Smith's water line
6 running to his trailer was open. (Tr. 49-50: 1-17)

7 36. During cross examination, Mr. Smith maintained that only 300 gallons of water was
8 used during the course of a month when his home was being built in Payson. (Tr. 52: 15-21)

9 37. Mr. Davoren testified that in August 2004, when service was discontinued, the end
10 reading for Mr. Smith's water meter was 185,630. (Tr. 74: 8-12)

11 38. Mr. Davoren stated that when he restored service to Mr. Smith's property in May
12 2011, he went to Mr. Smith's lot, removed the lock, read the meter and opened the valves to make
13 sure there was water and then reactivated Mr. Smith's account. (Tr. 74: 13-17)

14 39. Mr. Davoren further testified that in 2004 he terminated service to Mr. Smith's property
15 by turning off the connection and putting a lock on the Company's side of the meter. According to Mr.
16 Davoren, no water was going through the line at that point in time. (Tr. 74-75: 18-1)

17 40. Mr. Davoren stated that when he turned service on for Mr. Smith in May 2011, that
18 the water line which ran to Mr. Smith's old trailer, and had been on Mr. Smith's side of the meter,
19 had been removed. Mr. Davoren further stated that he could see water flowing from Mr. Smith's side
20 of the meter so he turned off Mr. Smith's valve when he was leaving. Subsequently, a spigot was
21 connected to Mr. Smith's side of the meter after Mr. Davoren left Mr. Smith's property. (Tr. 76L 1-27)

22 41. Mr. Davoren testified that after turning the water on at Mr. Smith's meter, he read the
23 meter and walked to his truck and wrote the initial reading down on a pad in his truck and then went
24 back to his office and reactivated Mr. Smith's account. (Tr. 76: 10-24)

25 42. According to Mr. Davoren, Mr. Smith's meter was read "around the first of June" and
26 his billing was produced on June 7, 2011. Mr. Davoren did not believe 37,020 gallons of water usage
27 was excessive since construction was going on at Mr. Smith's lot. (Tr. 77: 1-12)

28 ...

1 43. Mr. Davoren pointed out that another house owned by Mr. Smith down the street had
2 used 22,950 gallons one month in June of 2004, so he did not believe that 37,000 gallons usage in
3 2011 was a great amount. (Tr. 79: 6-23)

4 44. Several written documents were submitted after the hearing by the parties, but because
5 they were not sworn statements and neither party conducted examination concerning them, the
6 weight of the evidence proffered with these documents is considered of minimal value in this
7 proceeding.

8 45. On January 14, 2013, a ROO was issued in this proceeding which found that under the
9 circumstances, and considering the evidence as it was presented during the hearing, the burden of
10 proof is on the Complainant to establish by a preponderance of the evidence that his water bill was
11 incorrect. In this instance, neither the Complainant nor the Company presented what could be
12 determined as the best evidence; however, after considering all of the evidence presented during the
13 proceeding, the Company's evidence rebuts the allegations made by the Complainant. Mr. Smith was
14 the owner of the property at all times, and did not dispute the meter reading when he discontinued
15 service in 2004, nor the June 7, 2011 meter reading. As a result, the ROO concluded that the
16 Complaint of Mr. Smith should be dismissed because he had failed to prove by a preponderance of
17 the evidence that only 320 gallons would have been used during the course of a month while his
18 house was under construction.

19 46. On January 22, 2013, Mr. Smith filed exceptions to the ROO arguing that he had
20 proven his case by a preponderance of the evidence, and that he should prevail in the proceeding.
21 Mr. Smith also stated that he had received a credit of \$278.30 on his December 5, 2012 bill from the
22 Company, and attached a copy of his bill to illustrate the credit.

23 47. On January 30, 2013, at the Commission's Open Meeting where this matter was
24 considered, Mr. Smith appeared and reiterated that the Company in its December 2012 bill had given
25 him a credit for the disputed amount, and based on this belief, would file a request to dismiss his
26 Complaint. No one appeared on behalf of the Company.

27 48. On February 1, 2013, Mr. Smith filed a request to withdraw his Complaint due to his
28 belief that he had received a credit from the Company for the disputed amount.

49. Subsequently, the Company indicated it would reverse the credit of the disputed amount because the Complainant withdrew his complaint. The Company indicated it was told it could not include the disputed amount in the bill while the amount was being disputed.

50. On June 17, 2013, Staff filed an update.

51. Accordingly, we should not grant the request to withdraw the Complaint and should adopt the recommended findings herein.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and over the subject matter of the Complaint pursuant to Article XV of the Arizona Constitution and A.R.S. § 40-246, and A.A.C. R14-2-408 and R14-2-409.

2. The Complaint of Albert L. Smith should be dismissed.

3. The Company should bill its customers in conformity with A.A.C. R14-2-408 and R14-2-409.

4. Any termination of service should be in compliance with A.A.C. R-14-2-410.

ORDER

IT IS THEREFORE ORDERED that the Complaint of Mr. Albert L. Smith is hereby dismissed.

IT IS FURTHER ORDERED that Beaver Valley Water Company shall bill its customers in compliance with A.A.C. R14-2-408 and R14-2-409.

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1 IT IS FURTHER ORDERED that Beaver Valley Water Company shall comply with A.A.C.
2 R14-2-410 with respect to any termination of service.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
5
6

7 CHAIRMAN

COMMISSIONER

8
9 COMMISSIONER

COMMISSIONER

COMMISSIONER

10 IN WITNESS WHEREOF, I, JODI JERICH, Executive
11 Director of the Arizona Corporation Commission, have
12 hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this _____ day of _____ 2013.

15 JODI JERICH
16 EXECUTIVE DIRECTOR

17
18 DISSENT _____

19
20 DISSENT _____
21
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23
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27
28

1 SERVICE LIST FOR:

ALBERT L. SMITH V. BEAVER VALLEY WATER
COMPANY, INC.

2
3 DOCKET NO.:

W-02015A-11-0416

4
5 Albert L. Smith
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6 Tempe, AZ 85281-7919

7 Michael Davoren
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